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6 Attorneys for Defendants  
7 BALANCE STAFFING WORKFORCE, LLC (erroneously sued as Balance Staffing) and  
PERSONNEL STAFFING GROUP, LLC (erroneously sued as MVP PERSONNEL  
STAFFING GROUP)

9  
10 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

11 GEORGE J. AUSTIN, an individual ) CASE NO. 3:20-cv-00800-EMC  
12 Plaintiff, )  
13 vs. ) DEFENDANT BALANCE  
14 TESLA, INC., et al., ) STAFFING WORKFORCE, LLC'S  
Defendants. ) JOINDER IN DEFENDANT  
 ) TESLA'S MOTION TO DISMISS  
 ) OR STRIKE PORTIONS OF  
 ) PLAINTIFF'S FIRST AMENDED  
 ) COMPLAINT  
 )  
 ) Judge: Edward M. Chen  
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19 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 PLEASE TAKE NOTICE THAT during the Court's hearing on December 18, 2020 at  
21 2:00 p.m. regarding Defendant TESLA, INC. D/B/A IN CALIFORNIA AS TESLA MOTORS,  
22 INC.'s (erroneously sued as TESLA, INC.) Motion to Dismiss, or in the Alternative, Motion to  
23 Strike ("Tesla's Motion"), the Court allowed Defendant BALANCE STAFFING  
24 WORKFORCE, LLC (erroneously sued as Balance Staffing) ("BSW") to file a joinder to Tesla's  
25 Motion; thus, Defendant BSW hereby joins Telsa's Motion with respect to the ten causes of  
26 action in Plaintiff GEORGE AUSTIN's First Amended Complaint ("FAC"), which causes of

1 action are plead against both BSW and Tesla. BSW respectfully requests that any relief ordered  
 2 by the Court with regard to those causes of action be ordered in favor of Tesla and BSW as well  
 3 on the grounds that Plaintiff fails to state in those causes of action a claim upon which relief can  
 4 be granted under Federal Rules of Civil Procedure, Rule 12(b)(6).

- 5       1. Defendant BSW joins Defendant Tesla's Motion to Dismiss regarding the fourth  
        6 cause of action for conversion, ninth cause of action for wrongful termination, and  
        7 tenth cause of action whistleblower retaliation on identical grounds.
- 8       2. Defendant BSW joins Defendant Tesla's Motion to Dismiss regarding the first  
        9 cause of action for defamation on the grounds that the alleged statement cannot  
 10 form the basis for a defamation claim under the common interest privilege.
- 11      3. Defendant BSW joins Defendant Tesla's Motion to Dismiss regarding the second  
 12 and third causes of action for non-payment of wages under the California Labor  
 13 Code and Fair Labor Standards Act on the grounds that he failed to plead any  
 14 facts to establish such claims and asserted only conclusory statements.
- 15      4. Defendant BSW joins Defendant Tesla's Motion to Dismiss regarding the fifth  
 16 cause of action for breach of contract on the grounds that Plaintiff failed to assert  
 17 any facts to overcome the presumption that his employment was "at-will" and the  
 18 only "facts" asserted are vague, insufficient and unintelligible assertions.
- 19      5. Defendant BSW joins Defendant Tesla's Motion to Dismiss regarding the sixth  
 20 and seventh causes of action for fraudulent misrepresentation and fraudulent  
 21 concealment on the grounds that such claims are based on contract principles that  
 22 are wholly inapplicable in the context of at-will employment; Plaintiff failed to  
 23 sufficiently plead with particularity the circumstances constituting fraud; and  
 24 Plaintiff failed to allege any factual allegations of misrepresentation or  
 25 concealment specifically against BSW.
- 26      6. Defendant BSW joins Defendant Tesla's Motion to Dismiss regarding the eighth

1 cause of action for tortious interference on the grounds that he failed to establish a  
2 contract between him and BSW, failed to establish knowledge by BSW of an  
3 existing or future contract between him and a third party, and otherwise asserted  
4 only conclusory allegations.

5 BSW's joinder is based on this notice, all pleadings and papers on file in this action, and  
6 oral argument as may be presented to the Court.

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8 Dated: December 24, 2020

GORDON REES SCULLY MANSUKHANI,  
LLP

9 By:  
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12  
13

  
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DEFENDANT BALANCE STAFFING WORKFORCE, LLC'S JOINDER IN DEFENDANT TESLA'S  
MOTION TO DISMISS OR STRIKE PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT  
Case No. 3:20-cv-00800-EMC